IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

Crl.Rev.Pet.No. 960 of 1999()

CRA.227/1998 of V ADDL.SESSIONS COURT, ERNAKULAM
CC.263/1996 of JUDL.MAGISTRATE OF FIRST CLASS, KOLENCHERRY

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REVN. PETITIONER: APPELLANT/ACCUSED

SANTHOSH, S/O.GOPALAKRISHNAN
MARIMOLETHU VEEDU, PAMPAKUDA KARA
MEMMURI VILLAGE.

BY ADV. SRI.P.KESAVAN NAIR

RESPONDENTS: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE EXCISE
CIRCLE INSPECTOR
MUVATTUPUZHA

BY PUBLIC PROSECUTOR SRI.C.M.KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.960 of 1999

Dated this the 13th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 55(i) of the Abkari Act on the allegation that on 26.1.1996 at 7.30 p.m. he was found selling liquor in the property owned by third accused, who was subsequently acquitted.

2. The evidence adduced in the matter consisted the testimony of PWs' 1 to 5 and Exts. P1 to P4 and Mos' 1 to 8. PWs' 2 and 3, the independent witnesses turned hostile and did not support the prosecution. The articles recovered are 3 bottles of 750 ml. brandy, 8 bottles of 375 ml. Brandy, 5 bottles of 650 ml. beer and one partly opened bottle of liquor, plastic jug, three glasses and one empty bottle in the card board box. PW1, the Excise Guard and PW4, the Preventive Officer, who detected the offence and apprehended the accused, have testified in support of the prosecution version.

3. It is the contention of the revision petitioner that no evidence has been adduced as to the sampling and also that the

evidence of PWs' 1 and 4 is replete with contradictions. Ext. P3 is the chemical analysis report which establish the fact that commodity seized is contraband liquor. The contradictions pointed out that PW1 has stated that the people who was standing around ran away on seeing the Excise Party and the version of PW4 in cross examination that nobody ran away, I find is not of material in nature and is rather inconsequential. The liquor bottles as such were forwarded for chemical examination and hence no mention is made in detail as to sampling. As to the rest of the details of the recovery and seizure, the evidence of PWs' 1 and 4 corroborate. It is the version that the Excise Officials proceeded to the spot on receiving information that A1 was engaged in the sale of liquor in the property near Sree Naryayana Mandapam. Minor discrepancies is only normal in recollecting the details after a long period. In the circumstances and in the light of the evidence adduced, I find no reasons to interfere in the concurrent findings of the court below. The conviction is confirmed.

4. Counsel for the revision petitioner has pleaded for

leniency pointing out that the incident has taken place in the year 1996. Ten years have elapsed. In the circumstances, I find that the sentence is liable to be modified. The sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.25,000/- and in default, to undergo simple imprisonment for three months. Revision petitioner is granted two months' time to remit the fine amount. The revision petitioner shall appear before the Judicial First Class Magistrate Court, Kolencherry on 20.8.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl